

Buyout and Phase II Update

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As farmers, we are accustomed to operating in a world of unknowns, from crop prices to weather conditions. However, for Kentucky tobacco growers and quota owners the unknown may have never been as critical as what we are facing today and in the weeks to come with the 2004 Phase II payments. In every agricultural meeting I have attended recently, the number one topic of discussion is the future of these payments. I want to take this opportunity to provide you the latest information we have on this issue, and explain what we can expect in the weeks to come.

We believe without question that in the tobacco buyout the intent of Congress was to leave the 2004 Phase II payments in place. Congress was limited in the way it could craft the language to provide protection for the 2004 Phase II payments, due to the fact that the Phase II agreement is a legal contract between the tobacco companies and the participating tobacco-producing states. In the buyout legislation, Congress clearly establishes two sections of the bill one creating the assessment period and one establishing the collection date of those assessments in an effort to secure the 2004 Phase II payment.

It is our opinion that the tobacco companies must pay towards a new "governmental obligation" before they are allowed the dollar for dollar offset provided in the Phase II agreement. Our argument is simple, if the companies make no payment in 2004 to the newly created Tobacco Trust Fund (TTF) established in the buyout bill, then there is no dollar for dollar offset and the full 2004 Phase II payment has to be paid. Congress clearly did not intend for the companies to make a payment to the new TTF until March 31, 2005.

On November 2nd, the tobacco companies requested full refund of the 2004 Phase II payments already paid into the Phase II Trust (Trust). This request triggered a 150 day moratorium on the disbursement or transfer of any funds by the Trustee, effectively placing a hold on the 2004 Phase II payments. This moratorium will remain in place while the dispute is under consideration by the Court.

On November 16th the Court of Jurisdiction in North Carolina issued an order establishing the timeline by which it would consider this matter. The court order deadline established for filing briefs is December 10th, responses by December 17th, and a hearing date set for December 20th. The Judge presiding over the case indicated at the November 16th status conference that he intends to provide a ruling prior to Christmas.

If the tobacco states are successful in the court, our hope would be that the Judge's ruling would allow us to move forward with processing of this year's payments. Keep in mind that the losing party in this case will have the right to appeal. An appeal could possibly keep this matter alive in the courts for an indefinite period.

We are working with the Kentucky Attorney Generals office, the attorneys for the Trustee and other participating states to prepare the appropriate documents for the December 10th filing. No stone will be left unturned as we work to make the case on behalf of Kentucky's tobacco growers and quota owners.

One key point of our argument will focus on the USDA's interpretation of the legislation. To make our position known to USDA, I had the honor of representing and speaking on behalf of Governor Fletcher, the Kentucky Tobacco Settlement Trust Corporation and over 160,000 Kentucky tobacco growers and quota owners at a USDA public meeting in Washington on November 22nd. The focus of the meeting was to help USDA determine how the tobacco transition assessments will be collected, the timing of those collections and the assessment shares, among other issues. We do not know yet how USDA will proceed with the regulations; however we will continue to communicate with them and make our case.

As this matter works its way through the legal process, I encourage you to check our web site at <http://agpolicy.ky.gov> for the latest information and a link to the North Carolina Court.

Although the future of the 2004 Phase II payments is unknown at this time, I assure you that Governor Fletcher and his Office of Agricultural Policy will be doing everything possible to secure these payments. We know that this money is essential to Kentucky's farm families and the future of a successful transition from the tobacco program.